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FISCAL IMPACT STATEMENT

LS 7558

BILL NUMBER: HB 1379

NOTE PREPARED: Feb 19, 2009

BILL AMENDED:

SUBJECT: Improper Classification of Employees.

FIRST AUTHOR: Rep. Niezgodski

FIRST SPONSOR:

BILL STATUS: 2nd Reading - 1st House

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: This bill provides that an individual performing services for a contractor or subcontractor on a construction project is considered to be an employee of the contractor or subcontractor, with certain exceptions.

The bill provides for investigations of the employment relationship between an individual and a contractor or subcontractor by the Department of Labor, for certain procedures to be followed in investigations, and for various civil penalties to be assessed by the Department of Labor for the failure to properly classify individuals as employees. It provides for the sharing of information concerning the classification of individuals as independent contractors among the Department of Labor, the Department of State Revenue, the Department of Workforce Development, and the Worker's Compensation Board of Indiana.

The bill provides that certain information pertaining to employee classification shared among the state agencies is confidential and may not be published or open to public inspection. It provides for criminal penalties for the improper classification of employees as independent contractors, and prohibits the awarding of contracts for public work projects to a contractor or subcontractor for four years after the contractor or subcontractor is found to have committed certain recurring improper classifications.

Effective Date: July 1, 2009.

Explanation of State Expenditures: The impact on the Department of Labor will depend on the number of complaints filed. Assuming two additional investigators would be needed at \$36,557 and an assistant at \$24,715, then the increase in cost would be about \$147,750 for FY 2010 and \$144,432 for FY 2011.

The funds and resources required above could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions. The Department of Labor as of January 5, 2009, had six vacant positions valued at about \$187,070. One of the six positions had been vacant for more than one year. The department reverted \$474,696 to the state General Fund on June 30, 2008.

Penalty Provisions: The bill provides for a Class D felony, which is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor, depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$20,287 in FY 2008. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

Explanation of State Revenues: *Employee Classification Fund:* The bill establishes the nonreverting Employee Classification Fund for the purposes of administering these provisions, investigating contractors and agents of contractors, and for funding other expenses incurred in carrying out the duties of the department regarding employee classification. The fund consists of civil penalties collected for employee classification violations.

Civil penalties may be assessed of between \$500 to \$5,000 per employee on employers who improperly classify employees and refuse to correct a problem. The revenue will depend on the number of violations found by the department.

Independent Contractor Information Account: An independent contractor that fails to file a statement with the Department of Labor that includes the independent contractor's name, address, phone number, and Social Security number and the Social Security number, federal employer ID, or taxpayer ID of each person with whom the independent contractor has contracted is assessed a civil penalty of \$500, which is deposited into the Independent Contractor Information Account.

Penalty Provisions: If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class D felony is \$10,000 and \$500 for a Class C misdemeanor. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Explanation of Local Expenditures: *Penalty Provisions:* A Class C misdemeanor is punishable by up to 60 days in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: *Penalty Provisions:* If additional court actions occur and a guilty verdict

is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of the criminal costs fee. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

State Agencies Affected: Department of Labor, DOC.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association, DOC.

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